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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,966	08/10/2001	Gary E. Harman	19603/3461 (CRF D-2659A)	6010

7590

05/07/2003

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EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 05/07/2003

*C*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/927,966

Applicant(s)

HARMAN, GARY E.

Examiner

Irene Marx

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1651

The application should be reviewed for errors.

Applicant's election with traverse of Group I, claims 1-3, in Paper No. 5 is acknowledged. The traversal is on the ground(s) that because the claims are closely related they require common areas of search and consideration and thus no serious burden exists for search and examination.

However this is not found persuasive because the methods are of a different scope, require different steps and compositions, and the references which would be applied to one method would not necessarily anticipate or render obvious the other method.

Moreover, as to the question of burden of search, classification of subject matter is merely one indication of the burdensome nature of the search involved. The literature search, particularly relevant in this art, is not co-extensive and is much more important in evaluating the burden of search. Burden in examining materially different groups having materially different issues also exists.

Clearly different searches and issues are involved with each group.

For these reasons, the restriction requirement is deemed proper and is adhered to. The restriction requirement is hereby made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by McCabe *et al.*.

The claims are drawn to a process of promoting plant deep root development by applying *Trichoderma* or *T. harzanium* to a plant or a plant seed.

The cited reference discloses applying *Trichoderma harzanium* to a plant or a plant seed (See, e.g., Examples. Even though the McCabe *et al.* reference does not specifically address the promotion of plant deep root development, the inherent effect of the application of *Trichoderma* or *T. harzanium* to a plant or a plant seed is the promotion of plant deep root development, since

Art Unit: 1651

the same material, i.e., plant or a plant seed, is subjected to substantially the same microorganism, i.e. *Trichoderma* or *T. harzanium* in the process of the reference as in the claimed invention.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Harman *et al.*.

The claims are drawn to a process of promoting plant deep root development by applying *Trichoderma*, *T. harzanium* or *T. harzanium* T-22, to a plant or a plant seed.

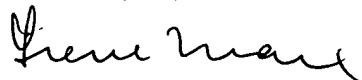
The cited reference discloses applying *Trichoderma harzanium* T-22, designated therein as 1295-22, to a plant or a plant seed (See, e.g., Table 2; Specification, page 5, lines 30 et seq.). Even though the Harman *et al.* reference does not specifically address the promotion of plant deep root development, the inherent effect of the application of *T. harzanium* T-22 plant or a plant seed is the promotion of plant deep root development, since the same material, i.e., plant or a plant seed, is subjected to the same microorganism, i.e. *T. harzanium* T-22, in the process of the reference as in the claimed invention (See, e.g., col. 26, lines 47-55).

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx  
Primary Examiner  
Art Unit 1651